

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:20-00092

ANTOINE MILLER

MEMORANDUM OPINION AND ORDER

Trial of this action is currently scheduled for April 27, 2021. However, on March 13, 2020, former President Trump declared a national emergency under the National Emergencies Act, 50 U.S.C. § 1601 et seq., in light of the COVID-19 pandemic. The impact of the pandemic is well-documented and, in order to lessen the spread of the disease, a number of measures have been instituted in this court over time, including the delay of certain criminal matters. See General Order and General Order # 3 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. March 13, 2020 and March 23, 2020) (Johnston, C.J.). On April 14, 2020, the earlier delay of in-person criminal proceedings was extended through May 31, 2020. See General Order # 5 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. April 14, 2020) (Johnston, C.J.) (ordering all civil and criminal petit jury selections and trials scheduled to commence from the date of the order through May 31, 2020 continued until further order of the court and that the time

period of continuances implemented by the order be excluded under the Speedy Trial Act). On May 22, 2020, civil and criminal petit jury selections and trials scheduled to commence from the date of the order through June 30, 2020 were continued until further order of the court. See General Order # 6 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. May 22, 2020) (Johnston, C.J.).

On June 25, 2020, an order was entered allowing for the resumption of jury trials effective July 1, 2020. See General Order # 7 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. June 25, 2020) (Johnston, C.J.). However, on September 18, 2020, due to the increased presence of COVID-19 in the community, all civil and criminal petit jury selections and trials were once again continued until further order of the court. See General Order # 9 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. September 18, 2020) (Johnston, C.J.). In so doing, the court found that "with regard to criminal trials, due to the Court's reduced ability to obtain an adequate spectrum of petit jurors and the effect of the above public health recommendations on the availability of counsel and Court staff to be present in the courtroom, the time period of

the continuances implemented by this Order will be excluded under the Speedy Trial Act". Id. Consistent with General Order # 9, on October 1, 2020, the court continued defendant's trial from October 6, 2020, to December 15, 2020.

On December 4, 2020, General Order # 10 was entered. See In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. December 4, 2020) (Johnston, C.J.). General Order # 10 kept the restrictions of General Order # 9 in place, including the postponement of jury trials, and made it necessary to continue the trial date from December 15, 2020 to January 26, 2021. See ECF No. 40. Thereafter, the trial was continued from January 26, 2021 to February 23, 2021. See ECF No. 41. On February 17, 2021, at defendant's request and because General Order # 10 remained in effect, the court once again continued defendant's trial to April 27, 2021.

On March 15, 2020, General Order # 11 was entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (ECF No. 16) (S.D.W. Va. March 15, 2021) (Johnston, C.J.). General Order # 11 permits the resumption of jury trials starting May 3, 2021. (Id. at 7.) General Oder # 11 outlines the difficulties that the court will face in resuming jury trials and implements a staggered approach to doing so. (Id. at 4-6.) "This staggered approach will not

only take into account the realities of safely conducting trials in a socially distanced environment, but will also assure that the judges of this district may exercise discretion to review their criminal trial dockets in an equitable manner to take into account all relevant factors, including the time that an accused defendant has been in custody for the sole purpose of awaiting trial.” (Id. at 6.)

Under General Order # 11, “the time period between May 3, 2021 and August 31, 2021 will be excluded under the Speedy Trial Act, as the Court specifically finds for the reasons outlined herein that the ends of justice served by excluding this time period outweigh the best interests of the public and each defendant in a speedy trial, pursuant to 18 U.S.C. § 3161(h) (7) (A).” (Id. at 7.)

Because General Order # 11 does not allow for the resumption of jury trials until after the currently scheduled trial date, a continuance is necessary.

In ordering the continuance of defendant's trial, the court finds that, due to the current danger to the public health caused by COVID-19, the ends of justice served by ordering the continuance outweigh the best interest of the defendant and the public in a speedy trial, pursuant to 18 U.S.C. § 3161(h) (7) (A). In so finding, the court considered the factors outlined in 18 U.S.C. § 3161(h) (7) (B) and finds that a failure to order this

continuance "would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice." Id. § 3161(h)(7)(B)(i).

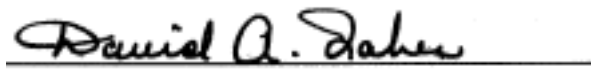
Accordingly, the court hereby **ORDERS** as follows:

1. Trial of this action is continued until June 1, 2021, at 9:30 a.m., in Charleston. Jury instructions and proposed voir dire are to be filed by May 25, 2021; and
2. Pursuant to 18 U.S.C. § 3161(h)(7)(A) and General Order # 11, the time from April 27, 2021 until the new trial date of June 1, 2021 is excludable for purposes of the Speedy Trial Act.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record, to the United States Marshal for the Southern District of West Virginia, and to the Probation Office of this court.

IT IS SO ORDERED this 16th day of April, 2021.

ENTER:

A handwritten signature in black ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge